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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 275

PACIFIC COAST DAIRY, INC.,
Appellant,

vs.

DEPARTMENT OF AGRICULTURE OF THE STATE OF CALIFORNIA, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA.

STATEMENT AS TO JURISDICTION.

CAREY VAN FLEET,
VINCENT W. HALLINAN,
Counsel for Appellant.

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PACIFIC COAST DAIRY, INC., A CORPORATION,

v.

DEPARTMENT OF AGRICULTURE OF THE STATE OF CALIFORNIA; WILLIAM J. CECIL, DIRECTOR OF AGRICULTURE OF THE STATE OF CALIFORNIA; BUREAU OF MARKET ENFORCEMENT OF THE STATE OF CALIFORNIA; C. J. CAREY, CHIEF; E. E. BROWN, AUDITOR OF THE BUREAU OF MARKET ENFORCEMENT OF THE DEPARTMENT OF AGRICULTURE OF THE STATE OF CALIFORNIA.

STATEMENT AS TO JURISDICTION.

In compliance with Rule 12 of the Supreme Court of the United States, Pacific Coast Dairy, Inc., herewith submits its statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this case.

The statutory jurisdiction of the Supreme Court to review by direct appeal the judgment complained of is conferred by Section 237(a) of the Judicial Code as amended by the Act of February 13, 1925.

The statutes of the State of California which were held to be valid but which the Pacific Coast Dairy, Inc., contended were unconstitutional and in conflict with the laws of the United States, are set forth in California Agricul-

tural Code, Div. 4, c. 10, § 735-738, as amended, Calif. Stats. 1941, c. 1214. The pertinent provisions are as follows:

736.3. Any stabilization and marketing plan shall contain the following provisions:

(a) Provisions for prohibiting distributors and retail stores from engaging in the unfair practices hereinafter set forth:

* * * * * * *

(6) The purchasing, processing, bottling, transporting, delivering or otherwise handling in any marketing area of any fluid milk or fluid cream which is to be or is sold or otherwise disposed of by such distributor at any place in the geographical area within the outer, outside and external boundaries or limits of such marketing area, whether such place is a part of the marketing area or not, at less than the minimum wholesale and minimum retail prices effective in such marketing area.

* * * * * * *

737.5. (a) After thirty (30) days after the effective date of this chapter no distributor shall deal in fluid milk or fluid cream without first having obtained a license from the director. The special licenses provided in this section are in addition to any and all licenses required by any other section of Division 4, Agricultural Code, or any law or ordinance of any county or municipality of this State. Applications for the licenses herein provided shall be made on forms prescribed by the director and shall state the name and address of the applicant and such details as to the nature of the applicant's business as the director may require. Such applicant shall further satisfy the director of his or its character, responsibility and good faith in seeking to carry on the business stated in th application. Licenses shall be issued for a period of twelve (12) months from the first day of each year or for the remainder of the calendar year from the date of issuance. Application for a new license for the following year by

a licensee shall be made at least thirty (30) days prior to the commencement of such year, and if not so made the applicant shall pay an additional sum equal to 50 per cent of the license fee before such license shall be issued.

* * * * * * *

737.7. (a) The violation of any provision of this chapter, or of any provision of any stabilization and marketing plan or any order of the director establishing minimum wholesale and minimum retail prices for fluid milk or fluid cream formulated under the provisions of this chapter, or of any of the unfair practices set forth in this chapter, is a misdemeanor, and is furthermore ground for revocation or suspension of license in the manner set forth in this chapter. The unfair practice provisions described in this chapter are hereby declared to apply to all distributors, whether or not a plan is in effect in the area in which a distributor is licensed or carries on business.

* * * * * * *

737.11. (a) The director may refuse to grant any license herein provided and may, after due hearing upon a verified complaint signed and filed with the director by any interested person, revoke or suspend any such license as the case may require, when he is satisfied that any applicant or licensee has violated any provision of this chapter, or any provision of any stabilization and marketing plan formulated under the provisions of this chapter, or of any order of the director establishing minimum wholesale and minimum retail prices for fluid milk or fluid cream formulated under the provisions of this chapter. Upon the filing of such a verified complaint, the director shall cause a copy thereof, together with a notice of the time and place of hearing of such complaint, to be served personally or by mail upon the person or persons named as respondent or respondents therein. Such service shall be made at least ten (10) days before said hearing, which shall be held in the city or town in which is situated the principal place of busi-

ness of the licensee or respondent, or in which the transaction or violation complained of is said to have occurred, or in the county seat of the county in which the transaction or violation complained of is said to have occurred, or in the nearest office of the State Department of Agriculture, at the discretion of the director. At the time and place appointed for such hearing the director or his agents shall hear the parties to said complaint, and shall enter in the office of the director at Sacramento a decision either dismissing such complaint or specifying the facts established on such hearing. A copy of such decision shall be furnished to each, every and all of the respective parties thereto.

(b) Such decision may include an order refusing, revoking or suspending the license applied for or held by the respondent, or affixing such other conditional and probationary orders as may be proper for the enforcement of this chapter or any of the provisions thereof or of any stabilization and marketing plan formulated hereunder.

(c) At the time of the filing of the verified complaint herein provided, or after any decision as above described, the director may thereupon and in the premises issue to and serve upon said person or respondent, an order directing said person or respondent to show cause why the license of said person or respondent should not be suspended or revoked for the violation complained of in the verified complaint or specified in the decision.

(d) Where the order to show cause is heard separately from the case or hearing set forth in the verified complaint, a copy of the said order to show cause, together with notice of the time and place of hearing upon said order, shall be served personally or by mail upon said person or respondent. Said order shall refer to an attached copy of a verified complaint, or to such other notice, affidavit or official document, in such a way as generally to advise and inform the respondent of the charge or violation upon which said order is

based and pursuant to which it is issued. Such service shall be made at least ten (10) days before said hearing, which shall be held in the city or town in which is situated the principal place of business of the respondent, or in which the transaction or violation complained of is said or charged to have occurred, or in the county seat of the county in which the transaction or violation complained of is said or charged to have occurred, or at the nearest office of the State Department of Agriculture, at the discretion of the director.

(e) At the time and place appointed for such hearing the director or his agents shall hear the matter set forth in the order, and the showing of the licensee in the premises, and shall enter in the office of the director at Sacramento an order and decision specifying the facts, dismissing the order to show cause or directing the suspension or revocation of the license or licenses held by the licensee, or making such other conditional or probationary orders as may be proper, upon the evidence presented at such hearing. A copy of said order and decision shall be furnished to the licensee. Previous violation by any applicant or by any person connected with said applicant of any provision of this chapter or of any stabilization and marketing plan formulated thereunder or of any order of the director establishing minimum wholesale and minimum retail prices for fluid milk and fluid cream shall be good and sufficient ground for denial, revocation or suspension of a license.

The date of the judgment filed in the Supreme Court of California is March 12, 1942. Petition for appeal is dated June 4th, 1942.

The Nature of the Case and the Ruling.

The Director of Agriculture of the State of California established the Santa Clara County marketing area within the outer, outside and external boundaries of the limits of which is located a Federal enclave known as Moffett Field

which was purchased by the Government of the United States for the purpose of erecting forts, magazines, arsenals, dock yards and other needful buildings. By Section 34 of the Political Code of the State of California consent to the acquisition of this land by the United States for public use was given by the State. Accordingly, under the provisions of Article I, sec. 8, paragraph 17, of the Constitution of the United States, all authority and state sovereignty in respect of the area known as Moffett Field has been relinquished by the State of California and the exclusive jurisdiction and sovereignty therein has vested in the United States.

Within this marketing area the Director of Agriculture of the State of California promulgated a marketing plan establishing minimum wholesale and retail prices for fluid milk. Pacific Coast Dairy, Inc., a California corporation, was and now is engaged in the selling and distribution of fluid milk in the Santa Clara County marketing area, State of California, and it was and is now licensed as a distributor of fluid milk in accordance with 737.5 (a) of the Agricultural Code of California. On October 15, 1941, Pacific Coast Dairy, Inc., entered into a contract with the War Department of the United States, signed by the Quartermaster's Department of Moffett Field, whereby it agreed to deliver and sell to the War Department fluid milk at the rate of $0.025 per half pint which amount is less than the minimum wholesale price established for the Santa Clara County marketing area.

A verified complaint against Pacific Coast Dairy, Inc., returnable on November 21, 1941, was filed with the Director, in which Pacific Coast Dairy, Inc., was alleged to have violated Section 736.3 (a) (6) of the Agricultural Code of the State of California. After stating the existence of the contract with the United States the complaint alleges that on or about November 1, 1941, it "did purchase, proc-

ess, bottle, transport and deliver fluid milk in the Santa Clara County marketing area, which milk was sold or disposed of by the respondent corporation in accordance with the above-mentioned contract at less than the minimum wholesale prices effective in the Santa Clara County marketing area, to the Federal Government at Moffett Field". The complaint prayed that the Director of Agriculture enter an order revoking the license of the appellant as a milk distributor.

On November 18, 1941, the appellant filed with the Supreme Court of California a petition for a writ of mandamus directed to the appellees restraining them from taking any further proceedings by way of hearing or revocation of license, and ordering them to set aside the order to show cause and to dismiss the proceedings, looking toward the revocation of the appellant's license. Appellant in its petition specifically challenged the constitutionality of the state statute which undertook to confer jurisdiction upon the Department of Agriculture to establish minimum prices for fluid milk to be delivered or sold within Moffett Field, alleging (par. IV): "that said respondents and said Department of Agriculture have no control, authority or power over said contract with the Government of the United States; that their jurisdiction does not extend over any of the acts set forth in said complaint, but that said acts were all committed, to-wit, sales and delivery, within the exclusive jurisdiction of Federal Territory, to-wit, Moffett Field, over which the State of California, or Department of Agriculture has no sovereignty, and the acts of the respondents constitute a wrongful and unlawful interference with the administration of Moffett Field by the War Department of the Federal government and with the contracts thereof; that the proceedings set forth herein and all other proceedings of a punitive nature found in the Agricultural Code

are void and an unwarranted interference with the Federal government's exclusive jurisdiction over Moffett Field." It is also urged that the state statute violated Article I, § 8, par. 17, of the Constitution (par. VII), and that the threatened procedure looking toward the revocation of its license violated the due process clause of the Fourteenth Amendment to the Constitution of the United States in that the State of California lacked jurisdiction to punish a sale within a territory over which the United States had exclusive jurisdiction (par. IX).

The United States filed a brief *amicus curiae* specifically raising the question that the state statute was a direct interference with and placed a burden upon the United States in the exercise of its governmental functions, that it was intended to have such result, and was accordingly unconstitutional. The United States further contended that the state statute is inconsistent and conflicted with the Federal statutes requiring that Army supplies be procured through competitive bidding. R. S. 3709 (41 U. S. C. 5); Act of July 5, 1884, c. 217, 22 Stat. 106, 109; Act of June 30, 1902, c. 1328, 32 Stat. 507, 514 (10 U. S. C. 1200-1201).

The Supreme Court of California passed squarely on the constitutional questions, 19 A. C. 885 (123 Pac. (2d) 442). In respect of the Due Process clause and the alleged interference with the exclusive jurisdiction of the United States, the court said:

> "* * * Petitioner contends that the State's control over activities within its jurisdiction affords it no authority to impose penalties because of transactions on Moffett Field. This contention proceeds from the theory that such penalties violate the due process clause of the 14th Amendment to the Constitution of the United States, denying to a State the power to restrict or control activities, persons, and property beyond its jurisdiction. * * * This contention,

> however, confuses the State's control over activities, persons, and property within its jurisdiction and the repercussions of that control in areas outside thereof. The question is not whether the State can prescribe the minimum prices at which milk may be sold on the territory within the exclusive jurisdiction of the United States, • • • but whether it has power to regulate acts within its jurisdiction even though they are followed in direct line of succession by a transaction outside its jurisdiction." (*id.* p. 890.)

The court concluded:

> "A state may exercise its power over things within its jurisdiction in the knowledge that it will thereby influence things beyond its jurisdiction, and its influence may be far reaching, so long as the external consequences remain incidental to the solution of internal problems." (*id.* p. 892.)

The court expressly rejected the contention of *amicus curiae* that the statute unlawfully interfered with the governmental functions of the United States. The court said (*id.* p. 897):

> "There remains the question whether the Milk Control Act can validly affect milk sold to instrumentalities of the United States • • •"

and answered its question by holding that

> "It is settled that such contracts are subject to state control, and that any consequent burden on the Federal Government is speculative and remote. • • • The very federal statutes requiring competitive bidding except cases 'where it is impracticable to secure competition' (10 U. S. C. sec. 1201), and Regulation 5-240 (g) of the United States Army provides that it is impracticable to secure such competition: '(3)

When the price is fixed by Federal, State, municipal, or other competent authority.' * * *"[1]

Finally, the court *sua sponte* raised the question of a possible conflict of the state statute with the "commerce clause" of the constitution. It held that the act did not violate the commerce clause, saying (p. 895) that "focused as it is upon a state problem, the state act, despite its repercussions upon interstate commerce, does not run counter to the commerce clause so long as it does not conflict with the provisions or objectives of Congressional legislation." In concluding that the state was not precluded by federal regulation the court stated (*id.* p. 896):

> "The absence of federal regulation may well be a recognition not only of the propriety but of the effectiveness of state regulation in the stabilization of a dominantly local industry, rather than ruling that there should be no regulation."

The constitutional questions decided by the Supreme Court of California are substantial and important. The United States, particularly at the present time, maintains and operates large numbers of camps, stations, posts and military fields of various characters. These posts, wherever located in the continental United States, are necessarily within the territorial limits of the various states and should the decision of the Supreme Court of California be allowed to stand, it would be possible for every State, by operating directly upon its citizens subject to its control in the area contiguous to such posts, to allow those posts to acquire

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[1] Regulation 5-240-(g) of the United States Army was not intended to have the effect ascribed to it by the court and was specifically amended by Procurement Circular No. 35 issued May 10, 1941. The amendment omitted subsection (3) quoted by the court. It is to be noted that the amended regulation was in effect not only at the time the court entered its opinion, but also at the time that Section 736.3(a)(6) was added to the Agricultural Code.

supplies only upon such terms as the State saw fit to permit.[2] Legislation seeking to control the price which the United States must pay distributors for fluid milk is in effect in a number of states. It is of the utmost importance to such distributors to learn if they must comply with minimum prices fixed by state boards in bidding upon federal supply contracts for milk.

The statute constitutes a deliberate attempt to regulate federal functions beyond the reach of valid state authority. Prior to the 1941 amendment which added Sec. 736.3(a)(6) to the Agricultural Code, no state statute undertook to fix prices within Federal enclaves and it was held that California had no power to do so. *Consolidated Milk Producers* v. *Parker*, 19 A. C. 898, 123 Pac. (2d) 440. On April 28, 1941, a Senate Joint Resolution was adopted by California memorializing the Congress of the United States to enact legislation requiring the Federal Government to comply with California's minimum price laws for milk. Calif. Stats. 1941, Concurrent and Joint Resolutions, c. 65, p. 3402. Congress having failed to respond favorably to the Joint Resolution, Section 736.3(a)(6) was added to the Agricultural Code which in effect provided that it was an unfair practice authorizing revocation of license for any licensed dealer to purchase, process and bottle milk for sale in a point outside the jurisdiction of California but within the outer, outside and external boundaries or limits of a marketing area. Obviously, only sales to the United

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[2] The Supreme Court of Pennsylvania has recently decided the case of *Penn Dairies, Inc., and the United States* v. *The Milk Control Commission*, Jan. Term 1942, Nos. 173 and 180, contrary to the contentions of the United States. That case presents the question of whether the price fixing provisions of the State of Pennsylvania are applicable to sales of milk to the United States Army. It also involves constitutional questions relating to the interference of those statutes with Federal undertakings and the Competitive Bidding Statutes.

States could be affected by such legislation, as indeed is conceded by the Supreme Court of California. It stated

> "The Federal territory within the State is so fragmented that there may be several federal islands within a single marketing area. If they are citadels of immunity from state jurisdiction, they are also exceptional segments in areas that are otherwise subject to that jurisdiction. They stand out like colored pins on the map of California, and range from military reservations to soldiers' homes, from court houses to penitentiaries, from Post Offices to Indian reservations, from national parks to regional dams." 19 A. C. at 894, 895.

It is clear, therefore, that the 1941 amendment was directed exclusively at the control of the price which the United States would be compelled to pay for fluid milk.

The constitutional infirmity of the statute seems clear. The states are without power to prescribe the conditions on which private citizens may contract with the Federal Government. Cf. *Osborn* v. *Bank of the United States*, 9 Wheat. 738, 867; *Crandall* v. *Nevada*, 6 Wall. 35, 44; *Arizona* v. *California*, 283 U. S. 423, 451-452; *James* v. *Dravo Contracting Co.*, 302 U. S. 134, 158; *Stewart Co.* v. *Sadracula*, 309 U. S. 94, 103-104. And the particular condition prescribed by the instant statute would seem to conflict with the Federal enactments requiring competitive bidding in letting the contracts for furnishing of supplies. R. S. 3709; Act of July 5, 1884, 22 Stat. 106, 109; Act of June 30, 1902, 32 Stat. 507, 514. Moreover, the states concededly may not directly prescribe regulations to govern a sale of milk on a Federal enclave within the exclusive jurisdiction of the Federal Government. *Standard Oil Company* v. *California*, 291 U. S. 242; *Arlington Hotel Company* v. *Fant*, 278 U. S. 429. They cannot, therefore, do so indirectly by prohibiting the "handling" of milk sold in disregard of

such regulations in a federal enclave. Cf. *Insurance Company* v. *Morse*, 21 Wall. 445; *Barron* v. *Burnside*, 121 U. S. 186; *Terral* v. *Burke Construction Company*, 257 U. S. 527, 532, 533. Finally the decision that the statute is not invalid under the Commerce Clause is apparently in conflict with the decision of this Court in *Baldwin* v. *Seelig*, 294 U. S. 511. Commerce between a state and a Federal territory is commerce between the states within the meaning of the Commerce Clause. *Hanley* v. *Kansas City So. Ry. Co.*, 187 U. S. 617; *Stoutenburgh* v. *Hennick*, 129 U. S. 141.

The jurisdiction of the Supreme Court to review by direct appeal a final order of a state court in a mandamus action which determines the rights of the parties is clear. *Hartman* v. *Greenhow*, 102 U. S. 672, 675; *McPherson* v. *Blacker*, 146 U. S. 1, 23; *Detroit Railway* v. *Michigan R. R. Comm.*, 240 U. S. 564, 570-571; *Carroll* v. *Becker*, 285 U. S. 380. The following cases are believed to sustain the jurisdiction of the Supreme Court. *United States* v. *Klein*, 303 U. S. 276; *Nebbia* v. *New York*, 291 U. S. 502; *Johnson* v. *Maryland*, 254 U. S. 51.

There is appended hereto a copy of the opinion of the Supreme Court of California, entered March 12, 1942.

Respectfully submitted,

PACIFIC COAST DAIRY, INC.,
a Corporation,
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UNITED STATES OF AMERICA,
By FRANK J. HENNESSY,
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Endorsed: Filed Mar. 12, 1942; B. Grant Taylor, Clerk, By S. C. S., S. F. Deputy,

APPENDIX "A".

In 1935 the California legislature passed an act regulating the marketing and distribution of fluid milk and fluid cream. (Cal. Agric. Code, div. 4, ch. 10, secs. 735-738.) The act declares that it is the policy of the state to promote the intelligent production and orderly marketing of such essential commodities as milk; that an adequate supply of wholesome milk is vital to the public health; that the production, transportation, processing, storage, distribution, and sale of milk and cream therefore constitute an industry affected with a public interest; and that unfair and destructive trade practices in the production, marketing, and distribution of milk and cream have menaced the public health by undermining sanitary regulations, which cannot of themselves guard against serious deterioration in the supply of milk. (Agric. Code, sec. 735.) It sets forth as one of its objectives the elimination of "speculation, waste, improper marketing, unfair and destructive trade practices, and improper accounting for milk purchased from producers * * *"

The act as amended (Cal. Stats. 1937, ch. 3, 413, 710; Stats. 1941, ch. 1214) empowers the Director of Agriculture to set up defined marketing areas within the State, to prescribe minimum prices for fluid milk and fluid cream to be paid by distributors to producers in accordance with stabilization and marketing plans for such areas (secs. 735.4 (b) (4) (5) and 736.3 (b) (c)), to prescribe minimum wholesale and retail prices of fluid milk and fluid cream within each area (Agric. Code, secs. 736.11, 737.12), to license milk distributors within each area, to revoke or suspend licenses for violation of any stabilization and marketing plan, and to bring actions to enjoin such violations. (Agric. Code, sec. 737.7.)

The petitioner seeks a writ of mandamus ordering the Director of Agriculture to dismiss proceedings undertaken pursuant to section 737.11 of the Agricultural Code with

the object of revoking petitioner's license. In these proceedings it is alleged that petitioner violated section 737.3 (a) (6) of the code and of the Stabilization and Marketing Plan for the Santa Clara Marketing Area by purchasing, processing, bottling, transporting, and delivering in the Santa Clara Marketing Area fluid milk that it sold to the Federal Government for less than the minimum wholesale prices prescribed for that area. The sale occurred on Moffett Field, territory within the geographic boundaries of the Santa Clara Marketing Area, but subject to the exclusive jurisdiction of the federal government.

Since the demand for fluid milk fluctuates from day to day and cannot be anticipated exactly, the producers must supply enough milk to meet all reasonable needs; then any surplus, or "stand by," is converted into milk products and sold by the distributors at lower prices, with corresponding lower receipts for the producers. The possibility of a surplus has been a constant threat to the stability of prices paid to the producers, given the reluctance of distributors to pay the full price for milk that becomes in part converted into milk products. A stabilization plan counteracts this downward pull by establishing minimum prices for fluid milk. At the end of a given period, the distributor settles his accounts with the producer by paying him a "blended price" representing the price for fluid milk bought less the difference between that price and the price for the milk converted into milk products. Even then the producer does not know what the blended price will be until the expiration of the period for settling accounts. The minimum price of fluid milk, however, represents a fixed element in the blended price that affords him at least some protection against speculation at his expense in the distribution of milk. If the distributor were under no compulsion to pay a minimum price he would seek to shift to the producer the risk of speculation in a fluctuating market by paying him the lowest possible price, not only for fluid milk sold to consumers but for milk converted into milk products, and there would soon be adverse effects on standards of production.

The same adverse effects would result if the minimum price established by a stabilization plan were not uniformly

enforced. The act itself anticipates that possibility by specifying that there may be no departures from the minimum price even when the milk is sold to the federal government on territory within the exclusive jurisdiction of that government. Section 736.3 (a) provides that any stabilization and marketing plan shall prohibit distributors and retail stores from engaging in such unfair practices as:

"(7) The payment of a lesser price by a distributor to any producer for fluid milk or fluid cream which is distributed to any person, including agencies of the Federal, State or local government, located upon property within the geographical limits of any marketing area for less than the minimum prices established by the director to be paid by distributors to producers for fluid milk or fluid cream for said marketing area.

"(8) The purchasing or receiving of any fluid milk or fluid cream by distributors from producers within a marketing area wherein a stabilization and marketing plan is in effect for less than the minimum prices established in such plan, regardless of whether such milk or cream is subsequently sold or distributed within or without such marketing area, or within or without the jurisdiction of the State of California."

The validity of such provisions is clear. (*Milk Control Board* v. *Eisenberg Farm Products*, 306 U. S. 346; *Alabama* v. *King and Boozer*, 62 Sup. Ct. 43; *James* v. *Dravo Contracting Co.*, 302 U. S. 134.)

In its original form in 1935 the milk control act prescribed minimum prices to the producers only. To prescribe such prices without also prescribing minimum resale prices is ineffectual, however, since the distributors cannot pay the producers the prescribed prices unless they have some guarantee of corresponding returns. Minimum resale prices, moreover, must govern all transactions, particularly those of the producer who is his own distributor and who is otherwise apt to sell to consumers at prices below those at which regular distributors are required to operate. In the light of these considerations, Article 2A was added in 1937 to provide for minimum wholesale and retail prices.

Section 736.11 provides that in all marketing areas where a stabilization and marketing plan is in effect the Director of Agriculture shall prescribe minimum wholesale prices at which milk shall be sold by distributors to retail stores, and minimum retail prices at which fluid milk shall be sold by distributors and retail stores to consumers. Section 736.12 provides that in determining minimum prices for any marketing area the director shall make an investigation relative to that area of such factors as the quantities of fluid milk distributed and normally required by consumers, the price to distributors and their handling costs, and the available capacity for processing and distributing. Section 736.13 prohibits sale by distributors at less than the prescribed prices.

The most real danger to the prescribed minimum lies in sales by distributors at lower prices on areas within the exclusive jurisdiction of the federal government, where transactions cannot be regulated by the State. Prescribed minimum prices fail of their purpose if they lie in the shadow of cut prices. The route of the milk from the producer to the consumer is a continuous one even when it crosses the imaginary line that demarcates federal jurisdiction, and the evil effects of substandard prices in the federal area course backward to play their part in undermining the intelligent production and orderly marketing that the State has declared essential to the public health. The State has therefore undertaken to regulate the milk industry within the bounds of its jurisdiction in such a manner as to obviate the elusive evils that it could not directly attack. Section 736.3 (a) (6) of the Agricultural Code provides that any stabilization and marketing plan shall prohibit distributors and retail stores from engaging in such unfair practices as;

"(6) The purchasing, processing, bottling, transporting, delivering or otherwise handling in any marketing area of any fluid milk or fluid cream which is to be or is sold or otherwise disposed of by such distributor at any place in the geographical area within the outer, outside and external boundaries or limits of such marketing area, whether such place is a part of the marketing area or not, at less

than the minimum wholesale and minimum retail prices effective in such marketing area."

The Stabilization and Marketing Plan for the Santa Clara Marketing Area contains the provisions outlined by this section. These regulations are directed at the milk before it can enter the stronghold of an area within the State's boundaries but outside its jurisdiction on terms that would menace the entire milk supply. The alleged violation in the present case is the purchasing, processing, bottling, transporting, delivering, and other handling of milk within the Santa Clara Marketing Area for prospective sale at a point outside the jurisdiction of the State at prices less than the minimum prescribed for that marketing area. Petitioner contends that the State's control over activities within its jurisdiction affords it no authority to impose penalties because of transactions on Moffett Field. This contention proceeds from the theory that such penalties violate the due process clause of the 14th Amendment to the Constitution of the United States, denying to a State the power to restrict or control activities, persons, and property beyond its jurisdiction. (*Standard Oil Co. of California* v. *California*, 291 U. S. 242; *Allgeyer* v. *Louisiana*, 165 U. S. 578; *St. Louis Cotton Compress Co.* v. *Arkansas*, 260 U. S. 346; *Compania General de Tabacos de Filipinas* v. *Collector of Internal Revenue*, 275 U. S. 587; *Home Ins. Co.* v. *Dick*, 281 U. S. 397. This contention, however, confuses the State's control over activities, persons, and property within its jurisdiction and the repercussions of that control in areas outside thereof. The question is not whether the State can prescribe the minimum prices at which milk may be sold on the territory within the exclusive jurisdiction of the United States (*Cf. Consolidated Milk Producers* v. *Parker*, this day decided), but whether it has power to regulate acts within its jurisdiction even though they are followed in direct line of succession by a transaction outside its jurisdiction.

It is established that a State may validly regulate activities, persons, and property within its jurisdiction, even though extra-territorial repercussions ensue, whenever such

regulation is vital to the welfare of its inhabitants. The propriety of the regulation is determined by its focus upon an internal problem and not by the range of its influence. Thus, in *Mirkovitch* v. *Milnor*, 34 Fed. Supp. 409, the court held that the State could exercise its police power over boats within State waters in a manner that was bound to affect their activities beyond State borders. Threatened with the depletion of its fish supply by the practices of certain fishermen, California provided in the Fish and Game Code that no person shall use a boat in this State or its waters that delivers to any point outside the State fish caught from the boat in the waters of the Pacific Ocean within the State or on the high seas or elsewhere without authorization of the Fish and Game Commission. The court pointed out that the code provision related solely to the operation within State waters of fishing vessels delivering their catch outside the State, and emphasized that the provision was designed not to regulate fishing operations beyond the State's jurisdiction but to protect the State's fisheries from depletion. The realization that the plaintiff might be unable to carry on fishing operations beyond the State's jurisdiction without entering and operating his boat within State waters did not deter the court from declaring that the statute was a valid exercise of the State's police power over acts within its jurisdiction.

In *Osborn* v. *Ozlin*, 310 U. S. 53, the United States Supreme Court upheld a Virginia statute requiring that insurance policies for persons or property in Virginia written by companies authorized to do business in Virginia be countersigned by a local agent receiving a certain percentage of the commission, even though insurer and insured are both outside of Virginia when the contract of insurance is negotiated. The close relation between the insurance contracts and the insured persons or property, together with the State's interest in protecting such persons and property, justified the regulation despite its extra-territorial effect. The court stated: "But the question is not whether what Virginia has done will restrict appellant's freedom of action outside Virginia by subjecting the exercise of such freedom to financial burdens. The mere fact that State ac-

tion may have repercussions beyond State lines is of no judicial significance so long as the action is not within that domain which the Constitution forbids. * * * Virginia has not sought to prohibit the making of contracts beyond her borders. She merely claims that her interest in the risks which these contracts are designed to prevent warrants the kind of control she has here imposed. This legislation is not to be judged by abstracting an isolated contract written in New York from the organic whole of the insurance business, the effect of that business on Virginia, and Virginia's regulation of it." (Pages 62-63.) (See, also, *Holmes* v. *Springfield Fire & Marine Insur. Co.*, 51 Sup. Ct. 19; 32 Fed. Supp. 964; *National Fire Ins. Co.* v. *Wanberg*, 260 U. S. 71, and *Palmetto Fire Ins. Co.* v. *Conn.*, 272 U. S. 295. Brandeis's dissent in *New York Life Ins. Co.* v. *Dodge*, 246 U. S. 357, 377; *cf. Fidelity & Deposit Co.* v. *Tafoya*, 270 U. S. 426.)

Again in the application of State workmen's compensation laws, it is established that where the injury occurs in one state and the contract of employment is entered into in another, the statute of the state with the greater interest in the welfare of the injured workman controls. (*Alaska Packers Assn.* v. *Industrial Acc. Com. of California*, 294 U. S. 532; *Pacific Employers Ins. Co.* v. *Industrial Acc. Com. of California*, 10 Cal. (2d) 567). In the Alaska Packers case the California Workmen's Compensation Act was held applicable to an injury sustained in Alaska by a workman who resided in California and entered into the contract of employment here. The court noted California's interest in the welfare of the injured workman, stating: "Obviously the power of a state to effect legal consequences is not limited to occurrences within the state, if it has control over the status which gives rise to those consequences." (Page 541.) (See, also, *J. C. Penney Co.* v. *Wisconsin Tax Com.*, 311 U. S. 435; *Great Atlantic & Pacific Tea Co.* v. *Grosjean*, 301 U. S. 412; *Nelson* v. *Sears Roebuck Co.*, 61 Sup. Ct. 586.)

The foregoing cases establish that a State may exercise its power over things within its jurisdiction in the knowledge that it will thereby influence things beyond its

jurisdiction, and that its influence may be far reaching, so long as the external consequences remain incidental to the solution of internal problems. Their application to the present case is clear. In accomplishing the objectives of the State Milk Control Act the State is concerned, not with the destination and sale of the milk but with the effect of the price of the milk upon the conditions of production. A price below the fixed minimum for milk produced in the State endangers those established standards for the milk industry that safeguard the public health, and leads successively to a breakdown of the law, price cutting, diminishing returns to the producers, inferior standards of milk production and finally injurious effects on the public health. The State has regulated the purchasing, processing, bottling, transporting and handling of fluid milk within its jurisdiction with the object, not of controlling transactions beyond its jurisdiction, but of stabilizing within its jurisdiction the production of a commodity vital to the public health.

The State Milk Control Act, however clear its validity under the due process clause, must be scrutinized further in the light of the commerce clause and the Federal Agricultural Marketing Agreement Act of 1937 (50 U. S. Stats. 246), held constitutional in *United States* v. *Rock Royal Co-op.*, 301 U. S. 533. The federal act authorizes the Secretary of Agriculture to enter into marketing agreements fixing minimum prices to be paid producers for milk that is "in the current of interstate or foreign commerce" or that "directly burdens, obstructs or affects interstate or foreign commerce." (Secs. 8 (c) (1), (2), (5), (7), (8), and (18). It defines interstate or foreign commerce as "commerce between any State, Territory or possession, or the District of Columbia, but through any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory, or possession, or the District of Columbia. For the purpose of this chapter • • • a marketing transaction in respect to an agricultural commodity or product thereof shall be considered in interstate or foreign commerce if such commodity or product is part of that current of interstate or foreign com-

merce usual in the handling of the commodity or product whereby they or either of them, are sent from one State to end their transit, after purchase, in another, including all cases where purchase or sale is either for shipment to another State or for the processing within the State and the shipment outside the State of the products so processed. • • • As used herein, the word 'State' includes Territory, the District of Columbia, possessions of the United States, and foreign nations." (Sec. 10(j).) The extensiveness of this definition leaves no doubt that Congress intended to cover the broadest possible field that might come within its powers to regulate interstate commerce and to govern territories.

The shipments of milk from California to such areas as Moffett Field, where the transit ends, fall within this definition of interstate commerce, for Moffett Field can be classified as either a territory or possession of the United States outside the jurisdiction of California, even though within the State's boundaries.

The contention is nevertheless advanced that transactions between such federal areas as Moffett Field and the rest of the State do not come within the power of Congress to regulate interstate commerce, because such areas do not fall within the categories of States, foreign nations, or Indian tribes set forth in the commerce clause. The judicial interpretation of the commerce clause, however, has greatly amplified the meaning of interstate commerce. Thus, commerce between States and territories has long been recognized as interstate commerce. (*Hanley* v. *Kansas City So. Ry. Co.*, 187 U. S. 617; *Inter-Island Steam Navigation Co.* v. *Hawaii*, 92 Fed. (2d) 412, aff'd 305 U. S. 306.) Commerce between States and the District of Columbia is similarly recognized as interstate commerce. (*Stoutenburgh* v. *Hennick*, 129 U. S. 141; *Galloway* v. *Bell*, 11 Fed. (2d) 558.) Such areas as Moffett Field are in the same category as the District of Columbia, for the same power of Congress extends over them both. (U. S. Const., Art. I, sec. 8, cl. 17; *Surplus Trading Co.* v. *Cook*, 281 U. S. 647; *Fort Leavenworth R. R. Co.* v. *Lowe*, 114 U. S. 525.) In the light of the foregoing cases it is clear that the power of

Congress to regulate interstate commerce, reinforced by its authority over territories and "forts, magazines, arsenals, dockyards and other needful buildings" enables it to regulate commerce between States and such areas as Moffett Field. (Compare *People* v. *Standard Oil Co.*, 218 Cal. 123; *Grayburg Oil Co.* v. *State*, 286 S. W. 789; *Grayburg Oil Co.* v. *State*, 3 S. W. (2d) 427, and *McKesson & Robbins* v. *Collins*, 18 Cal. App. 648, which did not involve any federal statute regulating such commerce.)

The milk industry in California is dominantly a local one. Only a small percentage of the milk produced goes beyond the jurisdiction of the State, but whatever the destination of the milk, the State is vitally concerned with the stabilization of the industry, and particularly with standards of production, in the State as a whole. The federal territory within the State is so fragmented that there may be several federal islands within a single marketing area. If they are citadels of immunity from State jurisdiction, they are also exceptional segments in areas that are otherwise subject to that jurisdiction. They stand out like colored pins on the map of California, and range from military reservations to soldiers' homes, from court houses to penitentiaries, from post offices to Indian reservations, from national parks to regional dams. (See cases cited in 38 Columbia L. Rev. 128, at 130.) The commerce between them and the rest of the State is of the greatest interest to the State regardless of the circumstance that it may be regulated by the federal government. Focussed as it is upon a State problem, the State act, despite its repercussions upon interstate commerce, does not run counter to the commerce clause so long as it does not conflict with the provisions or objectives of Congressional legislation. (*Milk Control Board* v. *Eisenberg Farm Products*, 306 U. S. 346; *Duckworth* v. *Arkansas*, 62 Sup. Ct. 311; *California* v. *Thompson*, 313 U. S. 109; *South Carolina State Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177. See 27 Cal. L. Rev. 615.)

The objectives of the federal act in fixing the minimum price payable by the distributor to the producer are the same as those of the California act, namely, to insure to

the producer a reasonable return on his products (secs. 1 and 2), and to the consumer a "sufficient quantity of pure and wholesome milk." (Sec. 8 (c) (18).) There is no federal marketing agreement or order with respect to the milk industry, however, now in effect in this State. Where a conflict is apparent the State legislation must yield. (*United States* v. *Wrightwood Dairy Co.*, 62 Sup. Ct. 523; *Cloverleaf Butter Co.* v. *Patterson*, 62 Sup. Ct. 491.) There is a question, however, whether any conflict exists when a federal administrative officer is empowered to prescribe regulations in a field already regulated by a State but does not actually do so. The United States Supreme Court has held in some cases that a conflict of authority is inherent in such a situation by interpreting the failure of the federal officer to make any regulation as in effect a ruling that neither federal nor State regulation is necessary. (*Oregon-Washington R. R. Co.* v. *Washington*, 270 U. S. 87; *Napier* v. *Atlantic Coast Line Ry. Co.*, 272 U. S. 605.) There is a growing tendency on the part of the court, however, to emphasize the evils arising from the absence of any regulation, and to hold therefore that the existence of an unexercised superior federal authority does not rule out State regulation vital to the public welfare. This realistic view germinated in cases upholding State regulation of certain public utility practices that the Interstate Commerce Commission did not regulate although it had authority to do so. (*Northwestern Bell Telephone Co.* v. *Ry. Commission*, 297 U. S. 471; *Missouri Pacific Ry.* v. *Larabee Flour Mills Co.*, 211 U. S. 612.) The court has balanced, not the State regulation against the unexercised federal authority, but the importance of the State's objectives against the effects of its regulation on interstate commerce. It has rejected the theory that the failure of a federal administrative agency to exercise its authority necessarily amounts to a declaration against all regulation. Indeed, in *H. P. Welsh Co.* v. *New Hampshire*, 306 U. S. 79, it demonstrated its concern with keeping the State regulation alive in the absence of immediate conflict with federal regulation. It upheld in that case the application of a state act regulating the hours of drivers of motor carriers to a driver transport-

ing an interstate shipment, even though the Interstate Commerce Commission had overlapping authority and had issued regulations that would conflict with the state act when they became effective two years later. The court took the view that the safety of the people should not wait upon federal administrative action. (See, also, *Kelly* v. *Washington*, 302 U. S. 1; *South Carolina State Highway Dept.* v. *Barnwell Bros., supra; Eichholz* v. *Commission*, 306 U. S. 268; *Maurer* v. *Hamilton*, 309 U. S. 598; *Mintz* v. *Baldwin*, 289 U. S. 346.)

Public health, like public safety, is a vital concern of the State, and its maintenance at proper levels should likewise not wait upon federal regulation. Toward that maintenance the California Milk Control Act contributes largely, but it might well be disrupted if those engaged in interstate commerce escaped the State regulation while they were untouched by corresponding federal regulation. The absence of federal regulation may well be a recognition not only of the propriety but of the effectiveness of State regulation in the stabilization of a dominantly local industry, rather than a ruling that there should be no regulation.

There remains the question whether the Milk Control Act can validly affect milk sold to instrumentalities of the United States. In a brief filed as *amicus curiae* on behalf of the United States, the United States Attorney contends that the application of the State act to such milk would unduly burden the operation of an essential federal agency, and that it is inconsistent with the federal statutes requiring that army supplies be secured through competitive bidding. (41 U. S. C., sec. 5; 10 U. S. C., secs. 1200-1201.) Federal agencies, however, cannot entirely escape the effects of State legislation. The California Milk Control Act does not discriminate against the United States army nor substantially hinder its efficient operation. The army is not precluded from obtaining milk, nor required to pay more for such milk than other consumers in the same area. The act regulates not the army but the distributors who are independent contractors with the federal government. It is settled that such contractors are subject to State control, and that any consequent burden

on the federal government is speculative and remote. (*Milk Control Board* v. *Gozzelin's Dairy, Inc.*, 16 N. E. (2d) 641; *Paterson Milk & Cream Co., Inc.* v. *Milk Control Board*, 118 N. J. L. 383; *Alabama* v. *King & Boozer*, 62 Sup. Ct. 43; *James* v. *Dravo Contracting Co.*, 302 U. S. 134; *Atkinson* v. *State Tax Com. of Oregon*, 303 U. S. 66; *Van Cott* v. *Utah*, 306 U. S. 511; *Helvering* v. *Gerhardt*, 299 U. S. 437; *Trinity Farm Const. Co.* v. *Grosjean*, 291 U. S. 466; see 27 Cal. L. Rev. 327.) The very federal statutes requiring competitive bidding except cases "where it is impracticable to secure competition" (10 U. S. C. sec. 1201), and Regulation 5-240 (g) of the United States Army provides that it is impracticable to secure such competition: "(3) When the price is fixed by Federal, State, municipal, or other competent authority." (*Penn Dairies, Inc.* v. *Milk Control Commission*, (March 25, 1941) Court of Common Pleas of Lancaster County, Pennsylvania; *Commonwealth* v. *Rohrer* (Pa.), 37 D. & C. 410.)

The alternative writ of mandamus is discharged and the petition for a peremptory writ is denied.

TRAYNOR, *J.*

We concur:

GIBSON, *C. J.*
CURTIS, *J.*
SHENK, *J.*
HOUSER, *J.*
EDMONDS, *J.*
CARTER, *J.*